

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID A. WATSON,

Defendant-Appellant.

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UNPUBLISHED

July 29, 2003

No. 239735

Wayne Circuit Court

LC No. 98-007707-01

Before: Wilder, P.J., and Griffin and Gage, JJ.

PER CURIAM.

Defendant David A. Watson appeals as of right his jury trial convictions of kidnapping, MCL 750.349, first-degree felony murder, MCL 750.316(1)(b), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to twenty-five to fifty years' imprisonment for kidnapping, life imprisonment for first-degree felony murder, and a consecutive two-year term for the felony-firearm conviction. We affirm.

Defendant first argues on appeal that the manner in which the police interrogated certain witnesses violated those witnesses' constitutional rights, thereby also violating his right to a fair trial. We disagree. Constitutional issues are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

Constitutional rights are generally personal. *People v Smith*, 420 Mich 1, 17; 360 NW2d 841 (1984). "They cannot be asserted vicariously, but rather only 'at the instance of one whose own protection was infringed by the search and seizure.'" *Id.* (citation omitted). "The Fifth Amendment privilege against self-incrimination is a personal privilege and cannot be asserted on behalf of another." *People v Safiedine*, 152 Mich App 208, 212; 394 NW2d 22 (1986). In *People v Jones*, 115 Mich App 543, 547; 321 NW2d 723 (1982), aff'd 419 Mich 577 (1984), this Court stated, "There is no authority to extend the personal right of a defendant against coerced self-incrimination to include statements made by witnesses." In *Jones*, the defendant argued that statements made by witnesses were involuntary and coerced. *Id.* This Court stated that "defendant had no standing to raise the issue of violation of the rights of third parties." *Id.*

While the police officers' alleged misconduct in holding witnesses for days and threatening witnesses may have violated their rights, defendant does not have standing to raise this issue. *Jones, supra* at 547. Further, the jury heard the witnesses testify about the methods used by the police to obtain information; therefore, it was for the jury to determine what weight

those allegations would have on the witnesses' testimony. *People v Treichel*, 229 Mich 303, 309; 200 NW 950 (1924).

Defendant's second issue on appeal is that insufficient evidence was presented to support his felony murder conviction. We disagree.

Sufficiency of the evidence in a criminal case is reviewed de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). To satisfy due process requirements, the prosecution must introduce sufficient evidence that a defendant is guilty beyond a reasonable doubt. *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 452 (1992). A court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The prosecutor need not negate every reasonable theory consistent with innocence. *Id.* The elements of a crime may be proven by circumstantial evidence and reasonable inferences from the evidence. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

"[T]he elements of felony murder are: 1) the killing of a human being, 2) malice, and 3) the commission, attempted commission, or assisting in the commission of one of the felonies enumerated in the statute . . . ." *People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999). "A jury may infer malice from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm." *Id.* at 759. "Malice may also be inferred from the use of a deadly weapon." *Id.* Kidnapping, the underlying offense in defendant's case, is enumerated in the felony murder statute. MCL 750.316(1)(b).

By participating in a kidnapping with a baseball bat and a gun, defendant set in motion events that would likely cause death or great bodily harm. See *Carines*, *supra* at 760. Despite the alleged conduct of the police, the jury had the opportunity to judge the credibility of the witnesses and found defendant guilty. The jury heard testimony that defendant kidnapped a teenage boy, beat him with a baseball bat, drove around with him in the trunk of a car, and then left him for days tied up in a basement until the boy eventually died. This type of conduct unquestionably set in motion events that would likely cause death or great bodily harm. We therefore conclude that sufficient evidence was introduced to sustain defendant's felony murder conviction.

Defendant next argues that a number of the prosecutor's comments and questions throughout the trial were improper. We disagree.

Generally, claims of prosecutorial misconduct are reviewed de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). Claims of prosecutorial misconduct are decided case by case, and the prosecutor's remarks are evaluated in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). Prosecutors are given great latitude when making their arguments. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

Defendant alleges that the prosecutor improperly vouched for a witness. “A prosecutor is prohibited from vouching for a witness’ credibility or suggesting that the government has some special knowledge that a witness will testify truthfully.” *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). In this case, the prosecutor’s comments about the witness’ plea agreement and its conditions did not constitute improper vouching. The prosecutor was merely emphasizing the truth of the matter – the witness entered into a plea agreement that was contingent on his telling the truth. See *Watson, supra* at 593. The prosecutor was not suggesting special knowledge of the witness’ truthfulness – the prosecutor’s comments only explained the nature of the plea agreement and encouraged the jury to evaluate the witness’ testimony. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002); *Knapp, supra* at 382.

Defendant also alleges that the prosecutor denigrated the defense. A prosecutor cannot suggest that defense counsel is intentionally trying to mislead the jury and cannot personally attack a defendant’s attorney. *Watson, supra* at 592; *People v Kennebrew*, 220 Mich App 601, 607; 560 NW2d 354 (1996). Importantly, it does not denigrate the defendant or the defense when the prosecution argues that a defendant’s presence at trial gave the defendant the opportunity to conform his testimony with the testimony of other witnesses. *People v Buckey*, 424 Mich 1, 14-16; 378 NW2d 432 (1985).

In this case, the prosecutor’s questioning of defendant regarding defendant’s former girlfriend’s statements was permissible. *Buckey, supra* at 14-16. The prosecutor merely asked defendant about his access to witness statements before taking the stand to present his alibi, a permissible area of inquiry. *Id.* Additionally, the prosecutor’s comment about wanting to cross-examine defense counsel did not denigrate the defense; it followed the prosecutor’s comment that she did not know which statements defendant had access to. The prosecutor was not attacking defense counsel’s credibility or arguing that defense counsel was intentionally trying to mislead the jury, but was properly questioning defendant’s credibility. *People v Wise*, 134 Mich App 82, 101-102; 351 NW2d 255 (1984).

Further, defendant alleges that the prosecutor improperly asked him to comment on the witnesses’ credibility. “[I]t is improper for a prosecutor to ask a defendant to comment on the credibility of prosecution witnesses since a defendant’s opinion on such a matter is not probative and credibility determinations are to be made by the trier of fact.” *People v Loyer*, 169 Mich App 105, 117; 425 NW2d 714 (1988). However, a review of the record indicates that the prosecutor did not ask defendant to comment on the witnesses’ credibility but asked whether defendant knew of any reasons why witnesses might fabricate their claims that he was the one who kidnapped and beat the victim. Even if the prosecutor’s questions were improper, defendant was not harmed by the questions. *Knapp, supra* at 384-385. Defendant’s answers reiterated his trial strategy – that certain witnesses implicated him because they were afraid of the real culprits. Defendant was not harmed by the reiteration of his defense. *Id.*; *Buckey, supra* at 17.

Defendant’s last issue on appeal is that defense counsel was ineffective in failing to object when the prosecutor allegedly improperly vouched for a witness. Because we have already concluded that the prosecutor did not improperly vouch for a witness, defense counsel was not ineffective for failing to object. *Knapp, supra* at 386.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Richard Allen Griffin  
/s/ Hilda R. Gage